

1 Max Cline, Esq. SBN 55533  
Jason Cline, Esq. SBN 236531  
2 Melanie Tavare, Esq. SBN 255581  
Andrew Christensen, Esq. SBN 260748  
3 The Cline Law Group  
1300 Clay St. #600  
4 Oakland, CA 94612  
(510) 464-8068

5 Attorneys for Debtors  
6

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8 **UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

9  
10 In the Matter of: ) Case Number 12-43377 MEH 13  
11 Gentil Jose Ferreira ) Chapter 13  
12 Dilza Ferreira ) Motion to Avoid Judicial Lien of Discover  
Debtors ) Bank Against Debtors' Real Property

13  
14 Debtors Gentil Jose Ferreira and Dilza Ferreira, commenced this case on 4/14/2012 by  
15 filing the above named petition for relief under Chapter 13 of Title 11 of the United States  
16 Code.

17 This motion is filed pursuant to 11 U.S.C. §522(f)(1)(A) to avoid and cancel a judicial  
18 lien held by Discover Bank on real property located in Contra Costa County. There are three  
19 pieces of property that the judicial lien is attached to:

- 20 • Home: 640 S. 32nd St., Richmond CA 94804  
21 • Lot #1: on 33rd St., Richmond, CA (Parcel No.: 549-212-004-2)  
22 • Lot #2: on Erlandson St., Richmond, CA (Parcel No.: 549 212 003 4)

23 This motion is based on the Declaration of Debtors, a Memorandum of Points and  
24 Authorities, Exhibits attached to the Motion, and Schedules filed with the court in this case.

25 Based on the formula laid out in §522(f)(2)(A) the judgment lien of Discover Bank  
26 may be avoided as it impairs the §703.140(b)(1) homestead exemption to which the Debtors  
27 are entitled because the sum of the liens and exemption is greater than Debtors' interest in the  
28 property would be in the absence of any liens.

1           WHEREFORE, Debtors pray for an order against Discover Bank to avoid the judicial  
2     lien recorded in Contra Costa County as document number 2011-0131235, on 7/1/2011 Case  
3     No: L0906123 for the amount of \$14,786.47 on Debtors' real property located at 640 S. 32nd  
4     St., Richmond CA 94804; and Lot #1 on 33rd St., Richmond, CA (Parcel No.: 549-212-004-  
5     2); and Lot #2 on Erlandson St., Richmond, CA (Parcel No.: 549 212 003 4).

6     Dated: June 4, 2012

/s/ Andrew Christensen

Andrew Christensen

Attorney for Debtors

1 Max Cline, Esq. SBN 55533  
Jason Cline, Esq. SBN 236531  
2 Melanie Tavare, Esq. SBN 255581  
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8 **UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

9 In the Matter of: ) Case Number 12-43377 MEH 13  
10 )  
Gentil Jose Ferreira ) Chapter 13  
11 )  
Dilza Ferreira ) Memorandum of Points and Authorities in  
12 Debtors ) Support of Motion to Avoid Judicial Lien of  
Discover Bank Against Debtors' Real  
13 Property

14 Debtors submit this Memorandum of Points and Authorities in support of the Motion  
15 to Avoid the Judicial Lien of Discover Bank. The basis of the motion is the lack of equity in  
16 the encumbered properties.

- 17 1. Debtors filed this Chapter 13 bankruptcy case on 4/14/2012.  
18 2. The Debtors believe the fair market value of the property at the time of filing this case  
19 are as follows: [See Declaration of Debtor]
- |   |              |
|---|--------------|
| 20 a. Home: 640 S. 32nd St., Richmond CA 94804          | \$130,000.00 |
| 21 b. Lot #1: 33rd St. (Parcel No.: 549-212-004-2)      | \$40,000.00  |
| 22 c. Lot #2: Erlandson St. (Parcel No.: 549 212 003 4) | \$40,000.00  |
- 23 3. In the absence of any liens on the properties, Debtors' interest in the property would  
24 be the full fair market value of the properties as listed above.
- 25 4. If there were no liens on the property, the Debtors could claim \$1,172.00 in wildcard  
26 exemption under C.C.P. §703.140(b)(5). These exemptions are found in Schedule C of  
27 the Debtors' bankruptcy petition.  
28

- 1 5. The Judicial Lien of Discover Bank that is the subject of this motion was recorded at  
2 the Contra Costa County Recorder's Office on 7/1/2011 as document number 2011-  
3 0131235, Case No: L0906123 for the amount of \$14,786.47. [Exhibit D]
- 4 6. Attached to the Motion as Exhibit E is a copy of Ms. Ferreira's credit report from  
5 Experian (pages 1, 7, and 8) dated May 7, 2012. On this credit report, Chase  
6 Manhattan Mortgage and CitiMortgage, Inc., successor in interest to Citibank (West),  
7 FSB report the amounts owed on the first and second deeds of trust.
- 8 7. Debtors request that the Court take Judicial Notice of Proof of Claim 4-1 filed by  
9 Contra Costa County Tax Collector to substantiate the amount owed.
- 10 8. Pursuant to 11 U.S.C. §522(f)(1)(A) this Court has the authority to sign an order to  
11 avoid and cancel a judicial lien held by Discover Bank on the Debtors' real property  
12 located in Contra Costa County.
- 13 9. The following are liens against Debtors' property in order of priority for each of the  
14 three properties:
- 15 a. Home:
- 16 i. Contra Costa County Tax Liens \$42,917.72
- 17 ii. Chase Manhattan Mortgage, successor in interest to Pacific Guarantee  
18 Mortgage Corp \$177,765.70 [Exhibit A]
- 19 iii. CitiMortgage, Inc., successor in interest to Citibank (West), FSB  
20 \$192,945.35 [Exhibit B]
- 21 iv. Citibank Judicial Lien \$19,089.19 [Exhibit C]
- 22 v. Discover Bank Judicial Lien \$14,786.47 [Exhibit D]
- 23 b. Lot #1:
- 24 i. Contra Costa County Tax Liens \$42,917.72
- 25 ii. Citibank Judicial Lien \$19,089.19 [Exhibit C]
- 26 iii. Discover Bank Judicial Lien \$14,786.47 [Exhibit D]
- 27 c. Lot #2:
- 28 i. Contra Costa County Tax Liens \$42,917.72

- 1                    ii. Citibank Judicial Lien                    \$19,089.19    [Exhibit C]  
2                    iii. Discover Bank Judicial Lien                    \$14,786.47    [Exhibit D]

3    10. For the purposes of avoiding a judicial lien under §522(f)(2)(A), the statute states that  
4       a lien shall be considered to impair an exemption to the extent the sum of-

- 5            i.    the lien;  
6            ii.   all other liens on the property; and  
7            iii.   the amount of the exemption that the debtor could claim if there were no liens  
8               on the property;

9       exceeds the value that the debtor's interest in the property would have in the absence  
10      of any liens.

11    11. In this case, the calculations of §522(f)(2)(A) are as follows for each of the three  
12      properties individually:

13            a. **Home:**

- 14               i.    Discover Bank judicial lien:                    \$14,786.47  
15               ii.   all other liens:                    \$432,717.96  
16               iii.   §703.140(b)(5) exemption:                    \$1,172.00  
17                   Total:                    \$448,676.43  
18               Debtors' interest if no liens:                    \$130,000.00

19    12. Therefore, based on the formula laid out in §522(f)(2)(A) the judgment lien of  
20       Discover Bank may be avoided as to this property as it impairs the §703.140(b)(5)  
21       wildcard exemption to which the Debtors are entitled because the sum of the liens and  
22       exemption (\$448,676.43) is greater than Debtors' interest in the property would be in  
23       the absence of any liens. (\$130,000.00).

24            a. **Lot #1:**

- 25               iv.   Discover Bank judicial lien:                    \$14,786.47  
26               v.   all other liens:                    \$62,006.91  
27               vi.   §703.140(b)(5) exemption:                    \$1,172.00  
28                   Total:                    \$77,965.38

Debtors' interest if no liens: \$40,000.00

13. Therefore, based on the formula laid out in §522(f)(2)(A) the judgment lien of Discover Bank may be avoided as it impairs the §703.140(b)(5) wildcard exemption to which the Debtors are entitled because the sum of the liens and exemption (\$77,965.38) is greater than Debtors' interest in the property would be in the absence of any liens. (\$40,000.00).

a. **Lot #2:**

vii. Discover Bank judicial lien: \$14,786.47

viii. all other liens: \$62,006.91

ix. §703.140(b)(5) exemption: \$1,172.00

Total: \$77,965.38

Debtors' interest if no liens: \$40,000.00

14. Therefore, based on the formula laid out in §522(f)(2)(A) the judgment lien of Discover Bank may be avoided as it impairs the §703.140(b)(5) wildcard exemption to which the Debtors are entitled because the sum of the liens and exemption (\$77,965.38) is greater than Debtors' interest in the property would be in the absence of any liens. (\$40,000.00).

For the reasons above, Debtors are entitled to the relief requested in the Motion: an order to avoid the judicial lien of Discover Bank recorded in Contra Costa County as document number 2011-0131235, on 7/1/2011 Case No: L0906123 for the amount of \$14,786.47 against the above listed three parcels of real property.

Dated: June 4, 2012

/s/ Andrew Christensen

Andrew Christensen

Attorney for Debtors

1 Max Cline, Esq. SBN 55533  
Jason Cline, Esq. SBN 236531  
2 Melanie Tavare, Esq. SBN 255581  
Andrew Christensen, Esq. SBN 260748  
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8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In the Matter of: ) Case Number 12-43377 MEH 13  
11 Gentil Jose Ferreira ) Chapter 13  
12 Dilza Ferreira ) Declaration of Debtors in Support of  
Debtors ) Motion to Avoid Judicial Lien of  
13 ) Discover Bank on Debtors' Real  
14 ) Property

15 We, Gentil Jose Ferreira and Dilza Ferreira, declare:

- 16 1. We are the debtors in this Chapter 13 case. The facts contained herein are true and  
17 correct and if called upon as witnesses we can testify competently as to them.
- 18 2. At the time we filed this Chapter 13 case on 4/14/2012, we were the owners of the real  
19 property located in Contra Costa County and described as follows:
- 20 a. Home: 640 S. 32nd St., Richmond CA 94804  
21 b. Lot #1: on 33rd St., Richmond, CA (Parcel No.: 549-212-004-2)  
22 c. Lot #2: on Erlandson St., Richmond, CA (Parcel No.: 549 212 003 4)
- 23 3. The three properties are encumbered by liens as follows:
- 24 a. Home:
- 25 i. Chase Manhattan Mortgage, successor in interest to Pacific  
26 Guarantee Mortgage Corp \$177,765.70 [Exhibit A]  
27 ii. CitiMortgage, Inc., successor in interest to Citibank (West), FSB  
28 \$192,945.35 [Exhibit B]

- 1                   iii. Citibank Judicial Lien                   \$19,089.19   [Exhibit C]  
2                   iv. Discover Bank      Judicial Lien           \$14,786.47   [Exhibit D]  
3           b. Lot #1:  
4                i. Contra Costa Property Tax Lien           \$42,917.72  
5                ii. Citibank Judicial Lien                   \$19,089.19   [Exhibit C]  
6                iii. Discover Bank      Judicial Lien           \$14,786.47   [Exhibit D]  
7           c. Lot #2:  
8                i. Contra Costa Property Tax Lien           \$42,917.72  
9                ii. Citibank Judicial Lien                   \$19,089.19   [Exhibit C]  
10               iii. Discover Bank      Judicial Lien           \$14,786.47   [Exhibit D]

11       4. Discover Bank recorded the judicial lien that is the subject of this motion against the  
12       above listed three parcels of real property in Contra Costa County on 7/1/2011. It is  
13       recorded as document number 2011-0131235, Case No: L0906123 for the amount of  
14       \$14,786.47. [Exhibit D]

15       5. We believe the fair market value of the Properties are as follows based on our  
16       knowledge of comparable properties sold in our area:

- 17           a. Home: \$130,000.00  
18           b. Lot #1: \$40,000.00  
19           c. Lot #2: \$40,000.00

20       We declare under penalty of perjury that the foregoing is true and correct to the best of  
21       our knowledge.

22       Dated: 5/7/2012

/s/ Gentil Jose Ferreira  
Gentil Jose Ferreira

23                   5/7/2012

/s/ Dilza Ferreira  
Dilza Ferreira